Editor's note: 91 I.D. 122; Reconsideration granted; decision reaffirmed by Order dated June 28, 1984 -- See 79 IBLA 181A th G below.

SHAW RESOURCES, INC.

IBLA 83-586 Decided February 24, 1984
84-81

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease applications NM 56000 and NM 56003. Separate appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying a request for return of filing fees. W 1840/3112.

New Mexico State Office decision affirmed as modified; Wyoming State Office decision affirmed as modified in part, reversed in part, and remanded for return of filing fees.

1. Oil and Gas Leases: Applications: Generally -- Words and Phrases

   "Prevents automated processing." As used in 43 CFR 3112.3(a)(2), 49 FR 2113 (Jan. 18, 1984), an application form is prepared in a manner that "prevents automated processing" where a mistake or omission prevents the computer from fully completing the automated program. An application containing such a deficiency is properly held to be "unacceptable."

2. Oil and Gas Leases: Applications: Generally

   Where an application form is deemed unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned, after assessment of a $75 processing fee, even if the

deficiency which rendered the form unacceptable is not discovered until after selection of successful applications.

3. Oil and Gas Leases: Applications: Generally

An application is properly rejected where the applicant has failed to disclose all parties in interest, has failed to identify any party who gave assistance in preparing the application, has interests in another filing for the same parcel, has failed to disclose all individuals in an association or partnership which has filed an application, or has utilized the address of a person or entity in the business of providing assistance for the filing of applications. An application is also properly rejected where the application is signed by a person other than the applicant and the signatory has failed to disclose the relationship between them. Where an application is properly rejected, the Department lacks authority to authorize the refund of any filing fees tendered with the application.

4. Oil and Gas Leases: Applications: Generally

Where a deficiency on an application form filed in the automated simultaneous leasing program neither prevents automated processing nor involves a failure to provide information necessary to police the system to prevent fraud or abuse, such deficiency shall be deemed de minimis, and will not render the application either unacceptable or rejectable.

5. Oil and Gas Leases: Applications: Generally -- Rules of Practice: Appeals: Effect of

Rejection of an application to lease filed under the automated simultaneous system necessarily encompasses retention of filing fees submitted therewith. Where an application to lease is "rejected" because of a deficiency on the application form, an applicant must either appeal or seek a return of any filing fees within 30 days of rejection. Where an applicant fails to do either, he will be barred from subsequently seeking a return of filing fees on the grounds that the deficiency should properly have been treated as rendering the application "unacceptable."

Shaw Resources, Inc., 73 IBLA 291 (1983), reconsidered and modified; Nancy McMurtrie, 73 IBLA 247 (1983), overruled to extent inconsistent.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

This decision involves two separate appeals by the same appellant. In the first, docketed as IBLA 83-586, Shaw Resources, Inc., has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 5, 1983, rejecting two simultaneous oil and gas lease applications which had been drawn with first priority for parcels NM 303 and NM 306, in the December 1982 drawing. The decision held that appellant's applications were defective because the Part B filed in that drawing, which encompassed applications to lease for 71 parcels, showed identification number 884087730, whereas the Part A on file for Shaw Resources showed identification number 840857730. Accordingly, BLM held that the applications were properly rejected pursuant to 43 CFR 3112.2-1(g) and 43 CFR 3112.6-1(c). A timely notice of appeal was thereafter filed.

The second appeal, docketed as IBLA 84-81, arises from the denial by the Wyoming State Office, of a request filed on August 16, 1983, for the return of certain filing fees, aggregating $16,200. These fees had been tendered in conjunction with four separate application forms filed for parcels located in New Mexico, Colorado, Montana, and Wyoming in the December 1982 drawing. Each of the application forms had the same mismatch of identification numbers set forth above. The New Mexico application form, involving 71 parcels, is the subject of review in IBLA 83-586. The Wyoming form, which had contained separate applications to lease for 95 parcels, had been the subject of a prior Board decision, styled Shaw Resources, Inc., 73 IBLA 291 (1983).

The other two application forms were filed for parcels in Montana and Colorado, respectively. A total of 29 parcels were sought in the Montana application form, while 25 parcels were embraced in the Colorado form. While an application to lease parcel CO-118 was drawn with first priority under the Colorado application form, and a number of applications to lease were drawn with second and third priority under the Montana form, there is no evidence before the Board that appellant either pursued an appeal from a rejection of the application for parcel CO-118, or otherwise initiated a request for a return of any filing fees tendered with these two forms prior to August 16, 1983.

A number of Board decisions have examined appeals arising out of the automated simultaneous system. In Shaw Resources, Inc., supra, we affirmed the decision of the Wyoming State Office, which had "rejected" the application for the above-described deficiency. We also held that the applicant's filing fees were properly retained, citing 43 CFR 3112.6-1 (1982). This decision was essentially reaffirmed in Deborah B. Moncrief, 76 IBLA 287 (1983). Appellant's appeal in IBLA 84-81 is essentially a request that we reconsider this earlier decision. For reasons given below, we hereby grant that request.

In George Dolezal, Jr., 75 IBLA 298 (1983), we held that BLM properly "rejected" applications where the identification number entered on Part B was mismatched with that placed on Part A. In that case, the mismatch was discovered prior to selection, and we held that BLM properly retained only $75 per application form, citing 43 CFR 3112.3(b), as amended at 48 FR 33648, 33679 (July 22, 1983), which stated that "[f]or each Part B application form

returned as unacceptable, of the fees remitted, a $75 processing fee shall be retained and the balance of the fees, if any, shall be returned to the remitter." (Emphasis added.)

In D. M. Olson, 76 IBLA 344 (1983), we held that BLM properly "rejected" an application which not only had a mismatched identification number, but which was undated and unsigned as well. The Board, however, also directed return of all filing fees, except for a $75 processing fee, relying on the procedures for handling "unacceptable" applications.

As a result of these decisions, and others in a similar vein, it became apparent that the Board's approach to adjudications under the new automated simultaneous systems had resulted in inconsistent decisions which failed to differentiate between an "unacceptable" application and one which was properly "rejected" and, as a result, had developed no consistent rationale for the retention or return of filing fees. It is our intention in this decision to exhaustively review procedures under the automated simultaneous system as they have evolved and to clearly delineate the situations in which an application should be deemed "unacceptable," when an application is properly "rejected," and when the return of filing fees is properly authorized.

The genesis of recent problems resides in the new automated simultaneous system and the regulations and procedures adopted to regulate it. The need for new procedures for handling filings under the simultaneous system was increasingly apparent as the number of applications filed each month, particularly in Wyoming and New Mexico, mounted relentlessly. It was obvious that the capacities of the Bureau to administer the program in a timely manner and, at the same time, to police it against possible abuses, were being taxed

to the breaking point. With literally hundreds of thousands of filings being made each month in just the Wyoming State Office, it was impossible, as a practical matter, to manually review all of the individual filings flooding the BLM State Offices. Such review as the Bureau was able to provide was necessarily limited to drawing entry cards (DEC's) drawn with priority. One corollary side-effect was that an individual would be informed as to the existence of a recurring deficiency in his or her application only when it resulted in the loss of priority. Because of these both administrative and adjudicatory problems, the Department determined to take advantage of new computer capabilities and embarked upon phased introduction of what has become known as the "automated" system.

This automated system marked a major departure from prior BLM practices. In the past, because DEC's were drawn manually for each parcel, applicants filing on multiple parcels were required to complete multiple DEC's. But, as is true with any repetitious task, as the number of cards which an individual was required to complete increased, so, too, did the chance for an unintentional error. A not insignificant amount of litigation before this Board involved precisely those types of situations where, through inadvertence or misunderstanding, critical requirements were either left undone or were improperly performed. See Nancy Y. Otani, 58 IBLA 38 (1981); H. L. McCarroll, 55 IBLA 215 (1981).

The automated system, by its very nature, permitted an applicant to file applications for numerous parcels in one document. Indeed, up to 600 separate parcels available for leasing might be applied for on one application form. However, one possibly unforeseen and certainly underestimated

drawback was that any individual error was now capable of invalidating a vast number of separate applications. To put this problem in perspective, it is helpful to describe the application forms used in the automated system.

Two separate forms are involved: Part A and Part B. Part A provides base data on any applicant. It consists of a single piece of paper containing spaces in which a prospective applicant is directed to fill in his or her name and address. In addition to filling in the boxes found for this purpose, the applicant is directed to fill in circles corresponding with the letters placed in the boxes. These circles, often referred to as "bubbles," are designed to be read by the Optical Mark Reader (OMR), and, therefore, for the purposes of the automated system, are actually more important than the letters printed in the boxes. In addition to the name and address, however, space is provided for an applicant to fill in his or her social security number (SSN). While the front of Part A merely refers to SSN's, the instructions printed on the reverse side note that corporations and other entities should fill in their employer identification number (EIN). However, it is not mandatory for an individual or corporation to use either an SSN or EIN. Rather, if one wishes not to disclose this number, of if an individual does not have a SSN, the instructions advise the applicant to leave this space blank. BLM then assigns a Bureau applicant number (BAN), which must be used in all future filings. Part A need be filed only once, since the computer thereafter retains the information.

Part B is, in effect, the actual application. It can be divided into two separate halves. The left half is machine readable, while the right half is not. The machine-readable left half consists of various elements or

fields. First, it contains 600 circles, numbered from 100 to 699 inclusive, which correspond to various parcels announced every other month as available for leasing. In addition, since the Wyoming State Office now conducts the actual drawing for all BLM State Offices, circles are provided by which an applicant must indicate which State Office prefix should apply. 1/ Since more than one State Office will have parcels with the same parcel number, filling in the information as to the State prefix is absolutely essential. Without it, there is no way of ascertaining exactly which parcel an applicant seeks to file on. There are also boxes and bubbles for filling in the amount of the filing fee accompanying the application. Finally, there are boxes and bubbles for the insertion of the SSN, EIN, or BAN. The applicant is instructed to use the number used on Part A in completing this item. If an applicant has filed Parts A and B together and elected not to submit either an SSN or EIN, BLM will fill in these blocks with the BAN assigned to Part A.

The right-hand side of Part B has spaces in which the applicant is directed to print in his name, address and zip code. The applicant is also directed to supply a qualification serial number (if applicable), the full name of any other parties in interest, and the name and address of any filing service which assisted the applicant in the completion of the application. Below these spaces is a printed certification that the applicant is a citizen authorized to file, that he or she is within the statutory acreage limitations, that all parties in interest have been disclosed, that no undisclosed agreement or understanding to assign any lease exists, and that the applicant

1/ While the Wyoming State Office conducts the actual drawing for each of the BLM State Offices, adjudication of the applications' acceptability and ultimate issuance of leases are handled by each State Office for the lands under its jurisdiction.

has no interest in any other application filed for the parcels for which the applicant has applied. The applicant signifies his certification of these statements by signing the application on the lower right-hand corner. Space is also provided for dating his signature. None of this information is machine readable.

When the application is received by the Wyoming State Office specified procedures are followed. 2/ The Office attempts to process all applications on the date they are received. Applications are divided into batches. Where individual applications are filed there is a limit of 50 applications to each batch. Where a filing service is involved, there is only one filing service per batch, regardless of the number of applications involved. The BLM employees involved in processing the application, generally called conveyance examiners, open at least two sides of every envelope. It is noted that an envelope can contain a Part A only, a Part B only, or a Part A and Part B, as well as a remittance. Where both a Part A and Part B are received without any information in the SSN fields, a BAN will be assigned. Assignment of a BAN is made by a senior conveyance examiner who enters the applicant's name in the BAN log. The draft manual is quite clear that "[i]n no event will we complete or correct a SSN field that is not blank."

The next step in the processing requires examination of the remittances. Any application without a remittance is immediately culled. Where a remittance is included, it is examined to verify that it is signed, has been

2/ The information relating to the actual processing of the applications is taken from a draft manual of instructions, dated July 28, 1983. While we recognize that this is merely a draft, it is indicative of the actual procedures being followed in the Wyoming State Office at the time most of the cases on appeal before the Board were being processed.

dated within the last 90 days, is payable to BLM, is in proper form, and contains numerical and written amounts that are in agreement. Applications accompanied by unsigned or stale-dated remittances as well as remittances which are either nonnegotiable or made out to someone other than BLM are not processed. Rather, they are set aside for return to the applicant after the close of the filing period. Where the written and numerical amounts on the check differ, the remittance is referred to the Accounts Unit for a determination as to whether the remittance should be processed for deposit, with controlling reference made to the written amount.

Assuming that the remittance is acceptable, the dollar amount of the remittance is then compared with the amount bubbled in the filing fee block. If these two disagree, the examiner will change the entry on the filing fee block to correspond with the amount of the remittance. If there is no entry in the filing fee field, the examiner will enter the amount of the remittance.

Next, all application forms are serialized. The number assigned to the specific application form is also placed on the accompanying remittance and on any other documents which were filed in conjunction with the application form. Part B is then scrutinized to ascertain whether the applicant has indicated that there are other parties in interest, with particular attention being paid to whether or not there is an attached statement listing other parties in interest.

After this process has been completed for 50 applications, thereby constituting one batch, a batch number is then obtained from the senior examiner. After the batch has been assembled, a photocopy of all the

remittances is made. The batch box is then picked up by the senior examiner who transmits the checks to the Accounts Unit and places the applications in the vault.

One other point should be made. Specific procedures are applied to application forms which are received in a damaged condition or which are damaged in opening or batching. These are placed at the beginning of the batch with a note directing the attention of a Certified Officer to the problem and describing what had happened. The Certified Officer subsequently makes a decision as to whether the application should be processed. If he decides it should be, 3/ a duplicate original application will be manually prepared. The Certified Officer makes a similar determination if the OMR refuses to process an application.

At first, no specific regulations were adopted concerning treatment of deficiencies as they related specifically to the automated simultaneous system. The automated system was first introduced in the Wyoming State Office. By notice, published on November 12, 1981, prospective applicants were apprised that applications for parcels in Wyoming could only be made on form 3112-6 (Part A) and form 3112-6(a) (Part B). See 46 FR 55783. The notice stated:

> [A]pplications filed on the automated form received in a condition that the authorized officer determines would prevent automated processing, will not be accepted. The authorized officer will

3/ While the manual does not expressly specify the basis upon which the Certified Officer is to make this determination, we think that the distinction properly drawn is between those situations in which the application form arrived in a damaged condition and those in which the damage occurred during processing.

> be guided in the decision of whether an application form is acceptable or unacceptable by criteria furnished in the manuals of the Bureau of Land Management and in instruction memoranda. Applications determined to be unacceptable will be returned to the applicant along with the filing fee. [Emphasis added.]

Id. at 55784.

Despite the express declaration that determinations of unacceptability would be made by recourse to the BLM Manual and Instruction Memoranda, the law is clear that such documents, while providing guidance to BLM, are generally binding neither on the public nor on this Board. See Morton v. Ruiz, 415 U.S. 199 (1974); Bryner Wood, 52 IBLA 156, 161-62 n.2, 88 I.D. 232, 235 n.2 (1981). Board adjudication, therefore, was initially controlled by general regulations and rules of adjudication adopted for the manual simultaneous system. See, e.g., Shaw Resources Inc., supra. The first attempt by the Bureau to specifically address possible problems in the operation of the automated simultaneous system came in a Federal Register publication on November 26, 1982. Because this notice is the starting point of so much of the confusion concerning the automated system, we shall set the relevant portions out in detail:

> By notice in the Federal Register on November 12, 1981 (46 FR 55783 et seq.), the Bureau of Land Management (BLM) established a requirement that all applications filed on BLM Form 3112-6 and 3112-6(a) (OMB No. 1004-0065) for noncompetitive oil and gas leases issued by the automated simultaneous drawing system must be completed and received in a condition that the authorized officer determines would permit automated processing.
> This notice is hereby published to draw direct emphasis to this requirement. Automated simultaneous oil and gas lease application forms 3112-6 and 3112-6a which are folded, spindled, or otherwise mutilated, which are incorrectly completed in any manner, which indicate an improper or incomplete Social Security

> Number, Employer Identification Number, BLM Applicant Number or other identification number, which contain information on Part B (Form 3112-6a) that does not correctly correspond to information on Part A (Form 3112-6), which contain entries that are obscured by incomplete erasure, stray marks, tape or other foreign substances, or which in any other way prevent fully automated processing will be considered unacceptable. The public is hereby notified that effective immediately applications shall be rejected without right of appeal or protest [4/] and the nonrefundable filing fee shall be retained to cover processing costs. [Emphasis added.]

47 FR 53508 (Nov. 26, 1982).

This notice had two unfortunate effects. First of all, it described a vast array of deficiencies as rendering an application "unacceptable." It then held that such "unacceptable" filings must be "rejected." As we shall show, the distinction between what is "unacceptable" and what must be "rejected" is critical to any attempts to rationally apply the regulations as they presently exist. Second, while purportedly reaffirming the earlier notice, the second notice held that the filing fees would not be refunded, despite the fact that the first notice had said exactly the opposite.

On June 30, 1982, proposed rules had been published generally revising the regulations governing oil and gas leases on public lands. See 47 FR 28550. As proposed, the changes made only scant reference to the new system. Thus, the proposed regulations provided:

4/ The authority by which the Acting Associate Director, BLM, purported to deny applicants the right to appeal granted by the Secretary of the Interior pursuant to duly promulgated regulations is nonexistent.

§ 3112.5 Unacceptable filings.

> (a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant or remitter for any filing which is:
>
> * * * *
>
> (7) Received in a condition which the authorized officer determines will prevent automated processing * * *
>
> * * * *
>
> (b) Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in this section or any reason set forth in §§ 3112.6-1 through 3112.6-3 of this title.

47 FR 28569 (June 30, 1982). The proposed language for section 3112.6-1 provided: "(a) Rejection is an adjudication process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned." Id.

The proposed language quoted above is important for our purposes since it clearly established a dichotomy between finding an application "unacceptable" and determining that the application should be "rejected." Where the former occurred, the application was not "processed" and the applicant received a refund of the filing fees tendered. Where the latter situation obtained, the application was "processed" through the simultaneous system and then rejected. No refund was given when a rejection occurred.

On July 22, 1983, final rules were published relating to oil and gas leasing. An entirely new subsection, 3112.3, entitled "Unacceptable and rejected applications" was promulgated. Since much of the recent confusion in adjudication under the automated system has directly resulted from attempts

to derive some coherent approach from this regulation, we shall discuss the various provisions seriatim.

Subpart 3112.3(a) described applications which were deemed to be unacceptable. Thus, it provided:

> (a) Any Part B application form which, in the opinion of the authorized officer:
>
> (1) Is not timely filed in the Wyoming State Office; or
>
> (2) Is received in an incomplete state or prepared in an improper manner; or
>
> (3) Is received in a condition that prevents its automated processing; or
>
> (4) Is received with an insufficient fee: shall be returned to the remitter as unacceptable.

48 FR 33679 (July 22, 1983).

Two points should be made about this subsection. First, while on initial reading it does not seem of particular importance, the phrase "in the opinion of the authorized officer" is a matter of some note. As shall become clear upon analysis of other provisions of this subsection, BLM sought to vest the authorized officer with unencumbered discretion in determining when an application was "unacceptable" as opposed to when it might be "rejected." Secondly, while subsections 3112.3(a)(1), (3), and (4) concern relatively well-defined problems, subsection 3112.3(a)(2) is extremely broad in scope and could arguably embrace a full panoply of deficiencies varying from a non-bubbled SSN field to an undisclosed party-in-interest.

The next subsections, 3112.3(b) and (c), describe the consequences which result when a filing is deemed "unacceptable." Thus, it is provided:

> (b) For each Part B application form returned as unacceptable, of the fees remitted, a $75 processing fee shall be retained and the balance of the fees, if any, shall be returned to the remitter.
> (c) Any Part B application form received without any fee or accompanied by an unacceptable remittance shall be considered unacceptable and shall not be returned.

Id. In effect, these subsections provide that where an application is deemed "unacceptable," a $75 processing fee will be assessed per application form, unless the remitter's mistake has been to fail to include a check, in which case the application form is not returned, nor is there any assessment of a processing fee. 5/

Subsection 3112.3(d) is self-explanatory and provides that where a parcel is removed from the parcel list by BLM any fees tendered for such parcel shall be returned to the remitter. 6/

Subsections 3112.3(e) and (f) are major provisions, relating to the "rejection" of applications. They provide:

5/ This failure to assess a processing fee where no check has been submitted must be premised on the rather unusual theory that the processing fee is earned by the return of the application rather than by the application's initial processing since any application must be opened to determine whether there is or is not an accompanying check.

6/ The most common reason for deletion of a parcel from the list of available lands is the subsequent discovery that the land is in a known geologic structure (KGS) of a producing oil or gas field, though it is not unknown that a parcel is listed which is presently under lease.

> (e) An application which is accepted for selection but which does not fully comply with subpart 3112 of this title shall, if selected for priority, be rejected and the filing fee retained.
>
> (f) Failure to reject or to identify a filing as unacceptable prior to selection shall not prevent rejection after selection for the reasons listed in this section or for any reason set forth in §§ 3112.5-1 through 3112.5-3 of this title.

Id. Thus, under subsection 3112.3(e), where an application is selected for priority but ultimately "rejected" because it does not comply with subpart 3112, the full filing fee is retained. Subsection 3112.3(f) makes it clear that an application may be "rejected" for a deficiency which would have rendered it "unacceptable." Conceptual problems with this approach have become apparent as the Board has attempted to apply the regulations to specific fact situations.

These problems become obvious in the following example. Assume two applicants, Smith and Jones, have each filed on 100 separate parcels, each filing a single application form. Both have failed to sign their applications. Smith's deficiency is discovered by the authorized officer and is deemed "unacceptable" under subsection 3112.3(a)(2). Jones' application, however, is processed under the automated system and is fortunate enough to be drawn first on three separate parcels. The absence of a signature on the application form, however, is a fatal defect which cannot be cured. See 43 CFR 3112.2-1(c) (48 FR 33678 (July 22, 1983)). Thus, Jones' applications are rejected. Smith is assessed a total of $75 for his error. Jones, on the other hand, has lost his total filing fee of $7,500, even though his error is exactly the same as that of Smith. The only difference is that the authorized officer caught Smith's mistake in processing while he or she missed

Jones' similar mistake. The error by the authorized officer in failing to note that the application was unsigned costs Jones $7,425, for which Jones receives absolutely nothing, since even though he was included in the automated drawing he had no chance of actually acquiring a lease.

Indeed, the regulations clearly attempted to authorize this disparate result by expressly noting that failure to identify a filing as "unacceptable" did not bar subsequent "rejection." This terminological distinction is of crucial import because of language used in section 1401(d)(1) of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 748. This section provided that:

> Notwithstanding any other provision of law, effective October 1, 1981, all applications for noncompetitive oil and gas leases shall be accompanied by a filing fee of not less than $25 for each such application: Provided, That any increase in the filing fee above $25 shall be established by regulation and subject to the provisions of the Act of August 31, 1951 (65 Stat. 290), the Act of October 20, 1976 (90 Stat. 2765) but not limited to actual costs. Such fees shall be retained as a service charge even though the application or offer may be rejected or withdrawn in whole or in part. [Emphasis supplied.]

Pursuant to the provisions of section 1401(d)(1), once the Department determines that an application is "rejected," the Department loses all authority to authorize issuance of refunds. Thus, ultimate "rejection" of an application for a deficiency that might, in the first instance, be deemed to render it "unacceptable" necessitates retention of the entire application fee. A declaration that an application is "rejected" has far different legal consequences from a declaration that the application is "unacceptable." Accordingly, it is of critical importance that uniformity be established in determining what deficiencies render an application form unacceptable, since this categorization will be dispositive of the possibility of returning

filing fees. However, before exploring that question, it is necessary to make passing note of the remainder of subsection 3112.3.

Subsection 3112.3(g) initially states that rejection of an application or return of an application as unacceptable shall be considered a final Departmental action, and then proceeds to declare that any appeal from such action will not delay issuance of the lease. The obvious intent of this regulation, gleaned from the preamble, was not to make rejection or return of an application as unacceptable "final" for the Department, but was rather to permit lease issuance during the pendency of an appeal, which would normally not be possible because of the application of 43 CFR 4.21(a). See 48 FR 33657 (July 22, 1983). Subsection 3112.3(h) requires the resubmission of the filing fees as a precondition to any appeal (a traditional requirement for invoking review within the Department) but adds the startling caveat that "the filing fee shall be retained regardless of the outcome of the appeal." Inasmuch as a number of appeals have been brought challenging the retention of the filing fee on the grounds that the application should have been excluded from the drawing as "unacceptable" rather than ultimately rejected, the regulation could, if applied literally, result in a Board ruling that an appellant was correct in his contention that his filing fees should have been returned, but has forfeited them by pursuing his appeal. In actual practice, the Board has ignored this language in making its determinations. See, e.g., D. M. Olson, supra.

By memorandum of August 8, 1983, the Director, BLM, advised the State Director, Wyoming, that "the procedures cited in the November 26, 1982, Federal Register Notice (47 FR 53508) and Instruction Memorandum No. 83-114,

dated November 18, 1982, are rescinded." 7/ New procedures were implemented to handle "necessary and appropriate" refunding of filing fees for the January, March, May, and July 1983 filings. The following criteria were established:

> Refunding is to [be] made based on the following criteria with a $75 processing fee retained and the balance of the filing fees, if any, returned to the applicant:
>
> 1. When the condition or manner of completion of the Part B application form prevents acceptance by the automated equipment, thereby preventing inclusion of applications in the automated random selection drawing process.
>
> 2. When automated processing reflects that an error is contained on the Part B application form.

It must be noted that this instruction memorandum, instituted after publication of the July 22, 1983, regulation changes but before their effective date, is at some variance with the actual language of the regulation. It is indicative, however, of the type of situations the Director, BLM, intended the regulations to cover.

Five months after these regulations become effective, they were amended again. 8/ The following changes are of relevance to this appeal. First of

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7/ The propriety of rescinding a notice published in the Federal Register by way of an internal memorandum is open to question. However, inasmuch as the rescission was primarily of benefit to the applicants, problems associated with the application of 5 U.S.C. § 552(b) (1976) are not involved.

8/ While we can understand the desire of BLM to clarify ambiguous regulations, the simple fact of the matter is that the constant revision of regulations has become a major cause, in itself, for adjudicatory confusion. Entire sections of regulations have been proposed, adopted, and removed in the course of a single calendar year, with the result that some regulations which were actually in effect were never codified in the Code of Federal Regulations. By the time the CFR is published, it is now invariably out-of-date as to crucial provisions

all, 43 CFR 3112.2-1, which had provided that an application would be deemed "unacceptable" if not completed in accordance with the instructions on the application form in a manner that permits automated processing or in accordance with the other requirements of subpart 3112, was amended by adding the phrase "or rejectable" after "unacceptable" and deleting the phrase "in a manner that permits automated processing." The relevant sentence now reads:

> An application shall be unacceptable or rejectable if it has not been completed: (1) In accordance with the instructions on the applications form; and (2) in accordance with the other requirements of subpart 3112 of this title.

49 FR 2113 (Jan. 18, 1984). The supplementary information suggests that the purpose of adding the phrase "or rejectable" was to clarify the intent of this paragraph "to include applications that are rejectable because of their failure to meet the instructions and filing requirements set out on the application form in subpart 3112." 49 FR 2111 (Jan. 18, 1984). The effect of this change, however, was to further confuse the distinction between an "unacceptable" application (or filing) and one which is "rejected."

Substantial changes were also made in subsection 3112.3. While the supplementary information suggests that the changes merely clarified the intent of the original language, there can be no gainsaying that the effect of these changes was to considerably alter the original regulations. Subsection 3112.3(a) was amended to read as follows:

> (a) Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it:

(1) Is not timely filed in the Wyoming State Office; or

(2) Is received in an incomplete state or prepared in an improper manner that prevents automated processing; or

(3) Is received in a condition that prevents automated processing; or

(4) Is received with an insufficient fee. [Emphasis supplied.]

The underlined change cannot be read as a mere "clarification" of the earlier language. In fact, the addition of the phrase "that prevents automated processing" might be read to substantially limit the instances in which subsection 3112.3(a)(2) would be applicable. The key question is the proper interpretation of the phrase "that prevents automated processing."

[1] This phrase could refer to specific omissions which would actually prohibit computer processing of the application. An example of this would be the lack of a State prefix (which would make it impossible for the computer to attach the application to a specific parcel). Additionally, stray lines on the application form can make it physically impossible for the computer to read the application. Thus, it could be argued that so long as the computer can actually read the application and process it through the selection process, such an application is "acceptable" though it might be subject to rejection for other errors on the form which did not "prevent automated processing." While such an interpretation would be plausible, we think it must be rejected for a number of reasons.

First, it is inconsistent with subsection 3112.3(a)(4) which deems an application submitted with insufficient rentals to be "unacceptable." We have detailed at length the actual processing steps taken in the Wyoming

State Office in handling the automated applications prior to computer insertion. It is clear that these steps do not include the counting of the number of parcels applied for in order to ascertain whether sufficient rentals have been tendered. On the contrary, it is the computer which correlates the number of parcels to the amount of the check which has been tendered. Any error on this point, however, would not prevent automated processing. There is no theoretical basis for treating this problem differently from a mismatched SSN field since the computer could simultaneously check both whether sufficient funds had been tendered and

whether a Part A matching the Part B being scanned was on file.

Secondly, an interpretation that limited the applicability of the "unacceptable" designation to only those deficiencies which prevent the computer from reading the application would clearly contradict the August 8, 1983, memorandum from the Director, BLM, to the Wyoming State Director, concerning refund procedures. As noted above, the Omnibus Budget Reconciliation Act of 1981 does not permit the refund of filing fees for "rejected" applications, and a number of instances for which the Director authorized refunds involved improperly completed application forms where the error would not have prevented automated processing (for example, a mismatched Part A and Part B). Thus, under a restrictive reading of the phrase "that prevents automated processing" these would not properly be deemed as "unacceptable" filings. Under such an interpretation, BLM would have directed the issuance of refunds for "rejected" applications in contravention of an Act of Congress.

It is clear, therefore, that the phrase "prevents automated processing" should have an expansive rather than a restrictive ambit. It includes any

deficiency which prohibits the computer from fully completing the automated program, including not only the selection of applications for specific parcels, but the matching of Part B with Part A. We hold that a mismatched Part A and Part B renders an application "unacceptable" under the regulations. Such applications should be screened out before the selection in the same manner that applications with insufficient filing fees are screened.

[2] We are cognizant that in a number of cases appealed to this Board the lack of a matching Part A and Part B was not discovered by BLM until after an application had been selected with priority. BLM deemed such cases to involve "rejection" of an application. This is not the case. Such applications were, in fact, unacceptable at the time they were filed, and their subsequent erroneous inclusion in the selection process did not alter their status. Upon discovery of the deficiencies in these cases, BLM should have declared the applications "unacceptable," canceled any priority which these applications might have received, and refunded the filing fees, save for the processing costs. 9/ The regulation at 43 CFR 3112.3(a) as promulgated in both the July 22, 1983, revision at 48 FR 33679 and the January 18, 1984, revision at 49 FR 2113 provides that any application with the enumerated deficiencies "shall" be deemed "unacceptable" and returned. Under the terms of this mandatory provision what is properly deemed "unacceptable" does not

9/ We are well aware of a problem in dealing with applications filed for simultaneous drawings conducted prior to August 1983 relating to the propriety of the assessment of the $75 processing fee. It is our view, however, that the fee is properly assessed in all situations which are deemed unacceptable under the present regulations but which were not deemed unacceptable under 43 CFR 3112.5. To the extent that applicants can be given the advantage of an amended regulation which increases the range of circumstances in which an application will be deemed "unacceptable" and thereby permit the return of the filing fees, they are required to come within its scope, which in this instance necessitates payment of $75 for each application form deemed "unacceptable," as a precondition to the return of any filing fees.

become "rejectable" by the failure of BLM to detect the deficiency prior to actual selection of priority applicants. Reading the regulation otherwise would render it arbitrary and capricious by hinging the fate of thousands of dollars in filing fees on the degree of screening performed by BLM before the drawing. Where possible, a regulation must be read in such a manner that it will not be arbitrary and capricious in its application.

[3] We think that the term "rejected" is properly reserved to a limited number of situations. Thus, where an applicant has failed to disclose all parties in interest, has failed to identify any party who gave assistance in preparing the application, has interests in another filing for the same parcel, has failed to disclose all individuals in an association or partnership which has filed an application (see 48 FR 37656 (Aug. 19, 1983)), or has utilized the address of a person or entity in the business of providing assistance for the filing of applications, such applications are properly "rejected," priority is denied to any successful applications, and the filing fees are retained. Similarly, where an application is signed by a person other than the applicant and the signatory fails to reveal the relationship between them, such an application is properly "rejected." 10/ All of these

10/ Where, however, the signature space is left blank, the proper action by BLM is to treat the application as "unacceptable." The signature is a necessary prerequisite to the filing of any application, since without it the applicant has failed to seek the right to submit a lease for any parcel of land. In view of the extensive review of application forms which the Wyoming State Office already performs in its preprocessing, virtually no time need be expended to cull out those applications where the signature blank is unfilled. Since such a document does not, in law, constitute an application (see Superior Oil Co. v. Udall, 409 F.2d 1115 (D.C. Cir. 1969)), it must be deemed "unacceptable."

We note that Instruction Memorandum No. 84-269 (Feb. 10, 1984), indicated that BLM State Offices should consider unsigned applications as being rejectable. Since, however, we have held that an unsigned application is not, as a matter of law, an application for anything, the State Office may not reject such an application but, rather, must treat it as unacceptable.

requirements are directly related to the Department's ability to police the simultaneous system to prevent fraud or abuse and those who fail to observe them properly suffer the consequences of their failure to comply.

[4] There are, however, two omissions which will not render an application either "unacceptable" or "rejectable." First, while the regulations are quite clear in requiring that the signature be dated (see 43 CFR 3112.2-1(c) (48 FR 33678 (July 22, 1983)), the Board has noted in recent cases that the Tenth Circuit Court's decision in Conway v. Watt, 717 F.2d 512 (1983), prohibits rejection of an application for an undated signature. See Amberex Corp., 78 IBLA 152 (1983). The Conway court held that such an omission was a "nonsubstantive" error and served as an "inappropriate" grounds for finding a simultaneous application defective. 11/

Similarly, we are of the view that the failure of the applicant to print out his name and address on the Part B application must also be viewed as a de minimis error if the identification number is properly completed on Part B. As we noted above, the applicant's name and address are submitted as Part A. Where an applicant has properly bubbled in his or her identification number on Part B, his name or address is immediately accessible by the computer from Part A. 12/ Indeed, since the only information on Part A is the

11/ We recognize that Instruction Memorandum No. 84-269 (Feb. 10, 1984), directed that undated offers be rejected. As indicated in the text, such action would be in direct contravention of applicable judicial and Departmental precedents. Failure to date the application form does not render an application either "unacceptable" or "rejectable." To the extent that it indicated otherwise, Instruction Memorandum No. 84-269 is contrary to law.

12/ We would note that the Board has already held that it is the filling in of the bubbles rather than the numerical transcription which controls on the question of whether an application is properly completed in those portions of Part B which are machine readable. See Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983). Thus, an omission of numbers or letters from the

name and address, there seems little justification in most cases for declaring a Part B defective for a failure to repeat this information thereon. 13/ Thus, where the only error on Part B is the omission of the name and address, the application cannot be deemed either "unacceptable" or "rejectable." To the extent that prior decisions of the Board indicate otherwise (see, e.g., Nancy McMurtrie, 73 IBLA 247 (1983)), they are hereby overruled.

In light of these principles, it is clear that the application form of Shaw Resources filed for parcels in New Mexico was "unacceptable." As such, any priority for parcels NM 303 and NM 306 was properly denied. However, its filing fees tendered with this application form should have been remitted to the applicant after a processing fee of $75 for the application form had been assessed.

As we noted earlier, insofar as the application form filed for parcels in Wyoming is concerned, we have deemed it proper to reconsider our decision

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fn. 12 (continued)
boxes in either Part A or Part B does not render the application either "unacceptable" or "rejectable." In addition, we would suggest that the Wyoming State Office reconsider its refusal to bubble in information in the SSN field where it has been left blank in these situations where numbers have been provided in the boxes. As submitted, such an application is clearly incomplete but no more so than one in which the remittance amount has been left blank. We do not think that assumption of this responsibility would place a particularly onerous burden on the State Office, since it has already assumed the same for remittance completion. Under such an approach, however, the State Office should not change a bubbled entry, even where it disagrees with the written one, since it could be the written one which is in error, and the bubbled in number would control. Rather, such a procedure would only apply where the boxes were filled in but the bubbles were left blank.

13/ One possible problem might arise where the applicant's name is particularly long since Part A has only 16 spaces for entry of a name. This problem is most likely to arise for corporate applicants. See Charles Fox and George H. Keith, Partnership, 77 IBLA 199, 203-04 (1983). In such a situation it might be impossible for BLM to identify the successful applicant. This problem, however, is best examined in the context of specific fact situations as they occur.

in Shaw Resources, Inc., supra. While we affirm the rejection of priorities afforded to any application under that application form, we overrule the earlier decision to the extent that it indicated that all filing fees were properly retained. Here, too, the filing fees should be returned after assessing a $75 processing charge per application form.

However, insofar as the application forms filed for parcels in Colorado and Montana are concerned, it is our view that no filing fees may be returned. In contradistinction to the situation involved in both the Wyoming and New Mexico filings, appellant made no attempt either to appeal from a rejection of priorities or to seek a return of the filing fees prior to August 16, 1983, for applications to lease filed for lands in Colorado or Montana.

[5] So long as any application under a specific application form remains unrejected, an applicant's right to seek return of fees tendered therewith continues. Where, however, all applications filed under a single form are rejected, either because of a deficiency in the application form or because of a failure of the applicant to be drawn with priority, an applicant has a 30-day period to appeal. See 43 CFR 4.411(a). Action by BLM rejecting all applications filed under a single form necessarily includes retention of filing fees. Thus, where an applicant fails to appeal or independently fails to seek a return of filing fees within the ensuing 30-day period, the applicant has lost all rights not only to contest rejection, but also to seek a return of any fees tendered with such application forms. Since the record before us contains no evidence that appellant either timely appealed from rejections of its applications under either the Colorado or Montana application forms, or, alternatively, timely sought return of those filing fees, it

is now barred from attempting to recover any filing fees connected therewith. Therefore, no return of the filing fees can be authorized for either the Colorado or Montana filings.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed as modified as to the denial of any priority as to parcels NM 303 and NM 306, the decision of the Wyoming State Office is affirmed in part and reversed in part and the case files are remanded to the Wyoming State Office for a return of the filing fees tendered in accordance with the views expressed herein.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

IBLA 83-586, 84-81 79 IBLA 153, 91 I.D. 122 (1984)	:	NM 5600, NM 56003
	:	Oil and Gas Applications
SHAW RESOURCES, INC. (On Reconsideration)	:	Petition for Reconsideration
	:	Petition Granted Prior decision reaffirmed

ORDER

On February 24, 2984, this Board, sitting en banc, issued a decision styled Shaw Resources, Inc., 79 IBLA 153, 91 I.D 122 (1984), in which we exhaustively reviewed procedures under the automated simultaneous oil and gas leasing system for the purpose of clearly delineating those situations in which an application should be deemed "unacceptable," when an application was properly "rejected," and when the return of filing fees was properly authorized. As a necessary corollary to such a determination, the Board reviewed in detail the form used in the automated system and explicated the considerations relevant not only in differentiating between an "unacceptable" and "rejectable" application but also in determining whether a deficiency in completion of the application was sufficiently de minimis as to render the application neither "unacceptable" nor "rejectable."

In examining this latter question, the Board was guided by recent Court decision, most notably the decision of the Tenth Circuit Court of Appeals in Conway v. Watt, 717 F.2d 512 (1983), holding, in effect, that "nonsubstantive" errors did not establish appropriate grounds for finding a simultaneous application defective. We accordingly reviewed various possible defects which an applicant might make in light both of the requirements necessitated by the automated nature of the new simultaneous system and the Department's continuing obligation to police the system to minimize, if not prevent, abuse.

Thus, we held that, consistent with the decision in Conway v. Watt, supra, the failure of an applicant to date the application would render it neither unacceptable nor rejectable so long as the applicant could show that the application had, in fact, been signed within the filing period as required by the applicable regulations. See 43 CFR 3112.2-1(c) (1983). Of particular relevance to the instant petition, we additionally held that failure of an applicant to manually enter his or her name and address on Part B did not make the application either unacceptable or rejectable provided that SSN, EIN or RAN fields were properly completed on Part B, which would enable the computer to access Part A which also contained the same information.

It must be noted that this latter holding squarely conflicted with certain prior decisions of the Board. In light of this, the Board expressly noted it was overruling any such contrary decisions, particularly that rendered in Nancy McMurtrie, 73 IBLA 247 (1983). 1/

On March 28, 1984, counsel for the Bureau of Land Management (BLM) filed a petition for rehearing in which he sought permission to file a brief on two separate matters discussed in our decision in Shaw Resources, Inc., supra. By Order of April 11, 1984, this Board partially granted counsel's request, but limited the scope of the petition to the rationale employed by the Board in overruling the McMurtrie decision. Subsequently, on April 30, 1984, counsel representing Nancy McMurtrie in an appeal of the Board's decision relating to her application, filed a petition to intervene and asked leave of the Board to file a brief amicus curiae. In view of the clear interest which counsel for McMurtrie would have in any action taken by the Board in reviewing BLM's petition for reconsideration, the request by counsel for McMurtie for leave to intervene as amicus curiae was granted by Order of May 17, 1984. Both counsel for BLM and counsel for McMurtrie have filed briefs in support of their respective positions. Because of the importance of the issue involved we hereby grant reconsideration, but, for reasons set forth infra, we reaffirm our prior ruling.

In his statement of reasons in support of the petition for reconsideration, counsel for BLM first makes the point that Part A is filed only in Wyoming while adjudication of the application form (Part B) is conducted by the individual BLM State offices. Counsel contends that "[w]ithout being able to ascertain a winning applicant's name and address from Part B, a State Office adjudicator must refer to and manually search through a 12-inch thick computerized list of the Part A data in order to determine such information." (Petition at 4). We find this argument unpersuasive for two separate reasons.

Obviously, one of the reasons which led the Board to conduct its in-depth review of the automated simultaneous filing adjudications was a desire to provide guidance for future adjudications by BLM. While it is true that all of the cases which have heretofore been appealed to

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1. Subsequent to the Board's determination in McMurtrie, but prior to its decision in Shaw Resources, McMurtrie requested that BLM return the filing fees submitted, less the $75 processing costs. When BLM denied this request (again prior to the issuance of Shaw Resources) McMurtrie filed a compliant with the Wyoming District Court, styled McMurtrie v. Watt, No. C83-0354, seeking issuance of an oil and gas lease in response to the application rejected in Nancy McMurtrie, supra. Inasmuch as return of the filing fees could not be properly authorized if the District Court were to grant McMurtrie appeal pending resolution of the District Court suit.

the Board were subject to adjudication only by the relevant State Office, counsel should also be aware that, pursuant to Instruction Memorandum No. 84-269, dated February 10, 1984, the Wyoming State Office SIMO Unit expressly delegated future authority not only cull out applications but to reject applications for clear violations of the regulations discerned after the selection process. Admittedly, certain aspects of adjudication will still remain in the individual State offices. But, rejection of any successful application by the Wyoming SIMO unit presupposeses physical examination of the non-machine readable portions of Part B. Thus, the Wyoming SIMO Unit, which does have access to the computer, can call up any Part A for any Part B which does not contain an entry under the name and address block provided on any Part B in which the SSN field had been properly completed. We see no great practical difficulties in placing a copy of that form in the case file.

Of even greater relevance, however, is the fact that counsel for BLM clearly misapprehends what documents are, as a matter of course, transmitted to each State Office. While it may be true that copies of the Part A's which are filed in Wyoming are not transmitted to each State Office, the fact of the matter is that each State Office is sent a copy of the computer generated printout of winning applicants. This document is generated by extracting from the Part A's on file in the computer the information submitted thereon. The only information submitted with a Part A is the name and address of the applicant. Thus, where a party correctly matches his Part B application form with the Part A data form already on file, all that a State Office need do to ascertain the name and address of the successful applicant is consult the computerized list of winning applications where the name and address is printed immediately to the right of the relevant parcel number. It would scarcely seem a rational utilization of time to "manually search through a 12-inch thick computerized list of the Part A data" in order to retrieve information readily accessible from documents already in the hands of the adjudicator.

Counsel for BLM also suggests that particular problems could arise when the Part B form, in addition to not containing the name and address of the applicant, also contains an incorrectly bubbled entry in the SSN field. Counsel suggests that this might result in the issuance of a lease to an individual who had not even filed on the parcel in question.

In all candor, we find it difficult to give much credence to counsel's fears. Discovery of the fact that a mismatch exists should scarcely be an insurmountable burden inasmuch as an applicant must sign the application. Failure of the signature on the application to match the name provided from the erroneously Part A would, we expect, put BLM on notice to inquire further. Once the existence of a mismatch is discovered, the result, charted by our decision in Shaw Resources, Inc., supra, is to render the application unacceptable and deprive it of any priority. We are, however, unable to discern how the fact that a mismatch might exist in the same application where the applicant has failed to fill in his name and address on Part B should

impel us to conclude that the failure to provide the name and address on Part B independently renders the application either unacceptable or rejectable.

Counsel also argues that "[a]ll communications relating to leasing are sent by each state office to an applicant's address as it appears on Part B since Part A is not available and may not be complete." (Petition at 5). Counsel also notes that, as a practical matter, applicants do not update changes in address on Part A (though they are so advised on the Part A form) and suggests that, BLM mails copies of the lease and the notice to pay the annual rental to the address on Part B on the assumption that this address is the current mailing address.

We find this argument unpersuasive. In the first place, as noted above, even if it is true that BLM relies on Part B rather than Part A for the address, this represents an exercise of volition on the part of BLM since in actual fact, it is always provided with the Part A address of winning applicants. Secondly, while we can appreciate the logic behind BLM's assumption that, where the address provided on Part B is at variance with the address, problems may exist in determining whether service attempted only at the address on Part B constitutes service "at the last address of record" as required by 43 CFR 1810.2(a). In any event, if an applicant has moved and failed to update Part A to show his current address and also failed to enter his actual notice of the obligation to execute the lease rental forms and tender payment and so fails to timely return these forms in conformity with 43 CFR 3112.6-1, the penalty for non-compliance will fall squarely on the applicant as he will lose all priority. We see no reason, however, to extend these consequences to those applicants whose only failure has been to enter their names and addresses on Part B and who stand ready, willing, and able to execute the lease forms and tender the rental payment. 2/

Finally, counsel suggests that the failure of an applicant to

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2. We recognize, as we did in Shaw Resources, Inc., supra at 179 n.13, 91 I.D. at 136, n.13, that the name and address on Part A may not be complete because of the limitation on the space available to enter such information for computer purposes. However, in a situation where the applicant has failed to enter the name and address on Part B, and the name or address of the applicant appears to be incomplete on Part A, BLM may inquire as to the complete name and address of the applicant by sending such inquiry to the address on Part A. Sufficient space for the address is available on Part A so that delivery of a letter to such address is assured (22 spaces for the street address, 17 spaces for the city, 9 spaces for the zip code).

enter his or her name on the Part B form complicates the batching process. Counsel argues:

> Batching of applications into two categories--those submitted by individuals and those submitted by filing services--is critical in determining filling. With no name and address on Part B, batching (particularly of filing services) becomes an increased manual task of double sorting and double checking to identify filing service assistance. This is particularly so if the applicant is a "pool" or partnership filing under the auspices of a filing service. Without the name and address indicated on Part B, this situation is not readily identifiable. Furthermore, to avoid detection such applicants are also likely to not complete the filing assistance block as well as the block for other parties in interest.

(Petition at 3). In essence, we believe that this argument presupposes the existence of other facts which, if true, would independently serve as grounds for rejection, and ultimately is premised on controlling actions of individuals who knowingly and intentionally are involved in subverting the simultaneous system at the expense of penalizing those whose only mistake has been to omit information already provided by the applicant to BLM.

First of all, this Board had held tht failure to an applicant to indicated that a filing service has rendered assistance in completing the application is, without more, adequate grounds to reject that application, since such an omission fundamentally undermines the Department's ability to police the simultaneous system against abuse. Thus, the argument presented on behalf of BLM presupposes that the applicant has willingly placed his application in jeopardy by failing to indicate that assistance was, in fact, rendered by a filing service, in addition to not supplying his name and address on Part B. But, any name and address supplied on a Part B could have only limited utility in evidencing that a filing service has been used since the applicants are expressly prohibited by regulation from using the address of a filing service as their address of record. See 43 CFR 3112.2-1(b) (1983).

In addition, the failure of an applicant to enter his name and address on Part B does not mean that the Wyoming SIMO unit has no way of identifying filing patterns since, as counsel for BLM admits, it is Part A which is primarily used in policing the system and trying to ascertain filing patterns indicative of multiple filings and undisclosed interests. Indeed, we would suggest that BLM's willingness to allow any Part B entry to control over the Part A record might actually increase the likelihood of undiscovered fraud since it allows the applicant to effectuate changes in an address which will not be revealed by computer analysis but rather are only discernible if discovered in the course of batching.

This Board is not unsympathetic to the problems facing BLM in simultaneously attempting to expeditiously leases to qualified priority applicants, prevent unscrupulous applicants and filing services from undermining the fairness of the system, and at the same time negotiate through the roadblocks constructed by an increasing number of court decision, including a few which, we must admit, fail to give adequate consideration to the simple practicalities and difficulties in administering the oil and gas leasing program. Nevertheless, BLM must recognize that, however much it may disagree with those decision and regardless of how well based its disagreement may be, it, no less than this Board, is bound to comport itself not merely with the specific holdings of those decisions, but with the animating rationale that might be deciphered from such rulings.

We have considered the justifications which BLM has presented in arguing that the Board should enforce a per se rule that failure to enter the name and address on Part B renders the application "unacceptable." For the reasons set forth above, they fail to convince us that our original decision on this point was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, but the prior decision of the Board, styled, Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), is reaffirmed in all respects.

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James L. Burski
Administrative Judge

We concur:

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Wm. Philip Horton
Administrative Judge

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C. Randall Grant, Jr.
Administrative Judge

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Franklin Arness
Administrative Judge

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Bruce R. Harris
Administrative Judge

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Will A. Irwin
Administrative Judge

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R. W. Mullen
Administrative Judge

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Gail M. Frazier
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Edward W. Stuebing
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